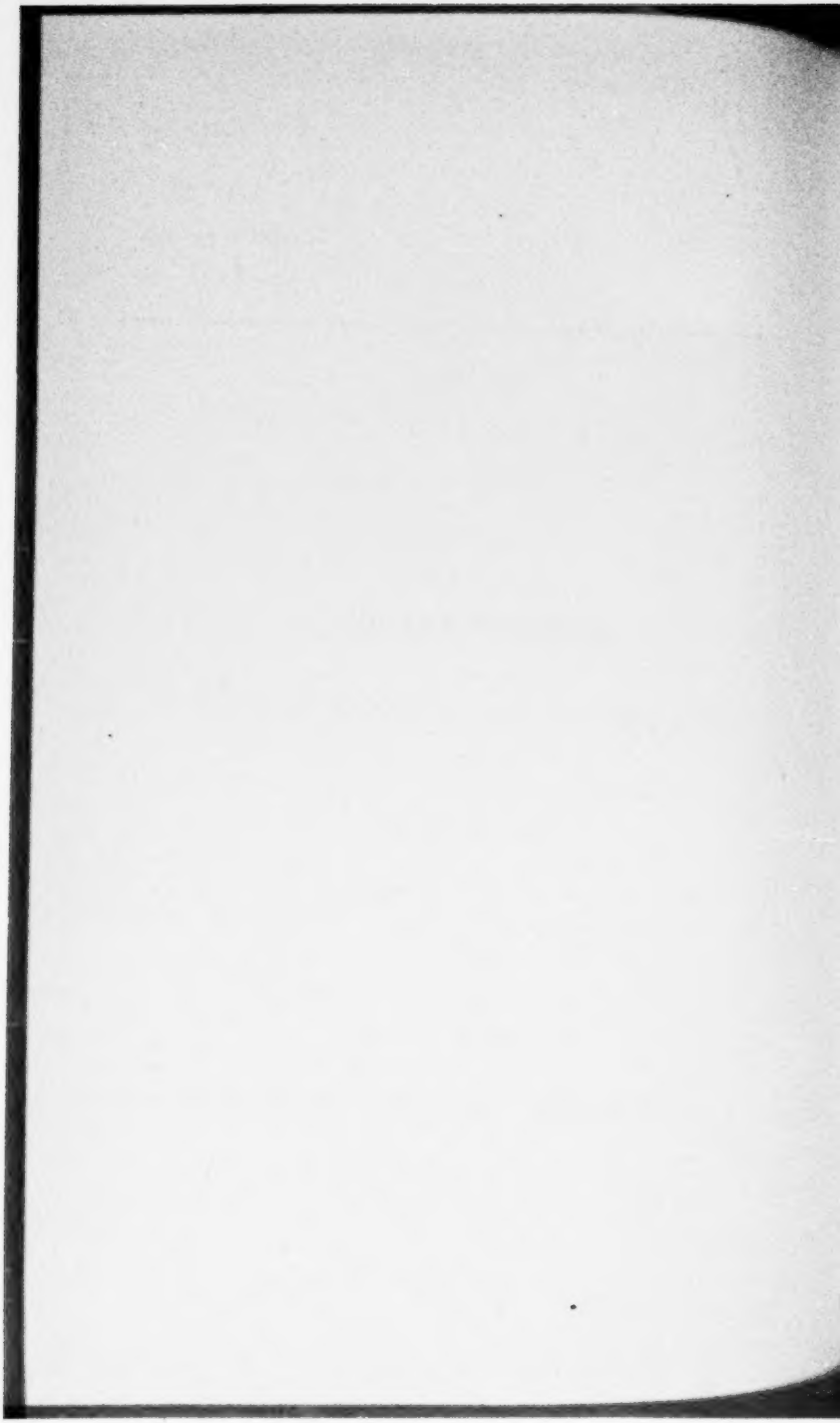


IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1904.

No. 61.

GEORGE F. HARDING,
Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

Error to the Supreme Court of Illinois.

BRIEF and ARGUMENT for PLAINTIFF IN ERROR, both upon the merits and in opposition to Motion to dismiss the Writ of Error and to affirm the judgment of the Supreme Court of Illinois.

STATEMENT OF THE CASE.

I.

INTRODUCTORY STATEMENT.

The plan of this *statement* is to eliminate all local questions of mere state law and procedure which are solely for the state courts to decide, and to bring forward the facts proving that *federal* questions are involved, upon which plaintiff in error is entitled to the decision of this court as to whether or not he has been deprived by the state courts of rights secured to him by the Constitution of the United States.

It is apprehended that upon reading the bare statement of the facts this Honorable Court will not agree with opposing counsel's position, "that the writ of error

misleading if it merely set forth the language of Section 230, omitting the Supreme Court's reading of the same, no apology seems needful for quoting that reading and construction from *Biggins* v. *The People*, 96 Ill., 381, as follows:

> "1. The fifty-ninth section, by implication, excludes the idea of a personal action against any person other than such owner. The purchaser of property *does not become personally liable* by virtue of this section *for any taxes assessed* and which were due and unpaid *for years prior to that in which he became the owner*, but only for such as may be assessed for the year or years in which he was the owner on the first day of May (now April)."
>
> "2. Nor does Section 232 (now 230) of the act affect the question. * * * This *does not in any manner enlarge the provisions of Section* 59 as to the persons who shall be personally liable for the tax."
>
> "3. And though the property may become forfeited at a time when a particular person is the owner, *but for taxes assessed for the year or years prior to that in which his ownership accrued,* SUCH FORFEITURE WILL NOT OPERATE TO CREATE A PERSONAL LIABILITY IN HIM TO PAY THE TAXES."
>
> "4. The declaration should *state the year* for which the supposed tax was *levied*, and should also state that the defendant was the owner of the property on the 1st day of May (now April) of that year."

The foregoing has been the uniform reading and construction of the sections involved, as will appear from cases such as 95 Ill., 412, *The People* v. *Winkelman;* 137 Ill., 230, *Greenwood* v. *Town of LaSalle.*

In these cases declarations were held bad on demurrer for failure to aver that the defendants were the owners of the property on the first day of May of the

year or years for which the taxes were *assessed;* the court saying that "the rules of pleading require that it should be averred in the declaration and proved on the trial."

3.

THE PLEADINGS.

The declaration, filed March 11, 1901, is printed in full on pages 8 and 9 of the record.

While it alleges that the defendant owned the lot on the first day of May in 1897 and 1898, and on the first days of May and April in 1899 and 1900, and while it alleges that *in the said years taxes were assessed and levied* on said real estate *against the defendant, as owner thereof,* it does *not* allege that he was the *owner* of the lot in *any* year *prior* to 1897, nor that the taxes *were assessed and levied* on said lot *against the defendant, as the owner thereof,* in any year prior to 1897.

Consequently, reading Section 230 as our highest tribunal construes and reads it, all that could be recovered from the defendant, had he been proved to be the owner of the lot in 1897-'8-'9 and 1900, would be the amount *assessed* against him and the lot *in those four years.*

The amount claimed in the declaration is $2,698.38. The amount of the judgment recovered and affirmed was $2,123.05 and costs. (Rec., 13.)

It will be shown hereafter by the record that the said judgment of $2,123.05 is made up of "forfeitures for A. D. 1879 and subsequent years," amounting to $1,998.70, and $124.35 taxes of 1900 not even due, much less forfeited, when this suit was brought, March 11, 1901. (Rec., 4.)

Who owned the lot in 1879 or in any subsequent year down to 1896, and in whose name it was assessed during any of those seventeen years is neither averred nor proved.

After defendant's objections to jurisdiction and motion to dismiss and his general and special demurrer were overruled he pleaded the general issue with notice of special matters of defense, as shown in full on pages 11 and 12 of the record.

Among the defenses thereby specifically set up and relied on were the following:

> "I. That the statute of Illinois upon which this suit is brought is contrary to the Constitution of Illinois and contrary to the Constitution of the United States, and is a taking of property without due process of law."
>
> "II. That defendant did not own the real estate described in the declaration, as alleged therein."

Plaintiff in error insists that the record fails to show that he was the owner of the real estate in question at any time prior or subsequent to the year 1896; and also fails to show in whose name or for what amount it was assessed from 1879 to 1896, nor during what years of all that time the forfeitures occurred, nor what was their amount in each or any of said years.

He further insists that the judgment of $2,123.05 rendered against him and affirmed by the State Supreme Court is a taking of his property without due process of law, contrary to the Constitution of the United States, without pleadings, issues or proofs, under a novel and exceptional construction of said Section 230, applied to *this* case, but never before or since to any other,—a construction which brings the section into conflict with those provisions of the Constitution of the

United States (Amendments, Article XIV.) that forbid any state to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, or to deprive any person of his property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws.

Other infringements of said constitutional guarantees committed, as we claim, by the trial court and by the Supreme Court of Illinois, will be detailed in the order of their occurence, as this statement of the case proceeds.

Those infringements were one and all duly and severally excepted to, and each of them was assigned as error, as will fully appear by the Assignment of Errors in the Supreme Court of Illinois (Rec., 108) and by the Assignment of Errors in this court (Rec., 127), reprinted in the present brief.

4.

THE LEADING FACTS IN PROOF, RELATING TO FEDERAL QUESTIONS INVOLVED.

Jury being waived by agreement, the cause was tried before the court alone. (Rec., 14.) The plaintiff's attorney offered in evidence a certified copy of the collector's warrants for 1897, 1898, 1899 and 1900. (Rec., 44-60.)

Plaintiff next offered the tax judgment and sale record "in 1900 for the taxes of 1899." (Rec., 60-68.)

Plaintiff next read in evidence those portions of the assessor's rolls of 1897-1900, relating to the said property. (Rec., 18-19.)

Thereupon the plaintiff rested, and defendant's motion to exclude the evidence offered was overruled by the court, defendant excepting thereto. (Rec., 19.)

Defendant then offered in evidence a deed made and executed by him, dated June 10, 1896, acknowledged July 1, 1896, and recorded July 2, 1896, conveying all interest in any and all lands of every kind and description claimed or owned by him in the State of Illinois, or within the City of Chicago, to the grantee therein named—the Chicago Real Estate Loan & Trust Company. (Rec., 20-22.) The court was first inclined to sustain the objections to this deed as too general, and then took the question under advisement, and later admitted the deed in evidence (Rec., 26), and upheld it as a valid and sufficient conveyance in Propositions of Law numbers 3, 11 and 12. (Rec., 102-3.) It is printed in full as defendant's Exhibit 1 on page 75 of the record. Defendant also repeatedly offered to show that he had not acquired any right, title, interest, claim or demand whatsoever in or to the lot in question, or been in possession thereof since the date of the said general deed by him to the Chicago Real Estate Loan & Trust Company, either by conveyance or otherwise; these offers were all objected to by the attorney for the plaintiff, and the objections sustained, and the offered proof not admitted, to all of which rulings the defendant duly excepted. (Rec., 22-25.) This proof that the defendant had not re-acquired any interest in the property was offered in many forms and at different stages of the trial, and in every case the offer was refused and exception preserved. (Rec., 22, 25, 33.)

An offer to show that the defendant had not been in possession of the property since the date of the general

deed was also refused and exception preserved. (Rec., 25.)

Plaintiff in error insists, as he insisted upon his motion for new trial (Points 4, 5, 6, 26, 27 and other points) (Rec., 105-106), and as he insisted in his Assignment of Errors in the State Supreme Court (Points 2, 3, 4, 5, 6, 10, 11 and others), and again in his Assignment of Errors in this court (Points 13, 5, 8 and others) (Rec., 128-130) that the deed of June 10, 1896, from him to the Chicago Real Estate Loan & Trust Company, having been admitted in evidence, and its validity and effect as a conveyance having been conceded by both court and counsel (Rec., 102, 23), he, the plaintiff in error, had the right under the Constitution of the United States and its amendments, to show affirmatively on the trial that he had never received or acquired any interest whatsoever in or to the said lot subsequent to the making of said deed of June 10, 1896, and that the refusal of the trial court to receive such proof offered by him was a violation of his said constitutional rights, and that he having duly made and preserved his exceptions to the said action of the trial court, and having duly assigned the same in the Supreme Court of Illinois as error on the part of the trial court, the failure of the Supreme Court of Illinois to hold the same as error and on that ground to reverse the said judgment of the trial court was a denial to the plaintiff in error of his said constitutional rights; and the said action of the said Circuit Court and of said Supreme Court of Illinois were each a taking of property without due process of law, and a denial to him of the rights, privileges and immunities secured to him by said constitution and its said amendments, and there-

fore contrary to the Constitution of the United States and its amendments, in these particulars, and was therefore error upon the part of the said trial court and upon the part of the Supreme Court of Illinois, respectively.

The defendant also offered in evidence the private charter granted in 1857 to the Peoria Starch Manufacturing Company, and it was admitted as Defendant's Exhibit 8. (Rec., 101.) The portion of the charter material in the present case, namely, the grant of power to acquire and hold real estate, is shown on page 101 of the record.

It was agreed at the trial that the name, Peoria Starch Manufacturing Company, had been duly changed to Chicago Real Estate Loan & Trust Company before the making of the general deed. (Rec., 27.)

The plaintiff's rebutting evidence, omitting what was excluded by the court, was as follows:

Plaintiff offered in evidence a document referred to as Objections to judgment for delinquent taxes filed in the County Court in 1898, and it was admitted against the objections of the defendant and exception preserved to its admission. (Rec., 32, 73.) It contains the recital that the several objectors, "George F. Harding, the Chicago Real Estate Loan & Trust Company and Abner C. Harding, *jointly and severally* represent that they are *jointly and severally* the owners of OR interested in lots 4, 5, 6," etc.—Here follows a long list of lots and lands, including the lot in question in this case. The names of the objectors purport to be signed by their attorney, Wm. J. Ammen.

Defendant offered to prove as to this document by A. C. Harding, then present in court, ready to so testi-

fy that he, A. C. Harding, under the direction of the attorney, prepared and filed the instrument in the County Court, and was directed by the attorney that it was unnecessary to separately specify the separate ownership of the different pieces of property in the different owners, but was sufficient to refer to the parties named as owners of or interested in the property described, and that by reason of this direction of the attorney the instrument was so prepared and filed. This offered proof the court rejected, and exception was preserved. (Rec., 43.)

Plaintiff in error insists that the rejection of this offered evidence tended to and did deprive him of rights guaranteed to him by the 14th Amendment of the Constitution of the United States, namely, the right not to be deprived of his property without due process of law, not to be condemned with his evidence *unheard*. The Supreme Court of Illinois sanctioned said denial of due process of law, and said consequent wrongful deprivation of property, by affirming the judgment of the lower court and its refusal of the motion for a new trial wherein the point (No. 7, Rec., 105) was specially raised and by not reversing said judgment as requested to do by the eleventh and other assignments of error urged before it. (Rec., 106.)

The same point is fully covered by the seventh Assignment of Error in this court. (Rec., 128.)

There was some vague and indefinite proof of occupancy of the lot in question by the Union Wire Mattress Company as a tenant, but this proof was only in connection with the leases which were at that time admitted in evidence, but the leases were afterwards excluded without any further proof as to occupancy by said alleged tenant.

There were, however, three checks accompanied by three receipts offered in evidence by the plaintiffs and admitted against the objections of defendant. (Rec., 36.)

An employe of the First National Bank testified that the checks in question had been deposited to the credit of George F. Harding, such testimony being admitted against the objections of the defendant, as was also one deposit slip which was alleged to have embraced one of the checks. (Rec., 38.)

After the checks and receipts were admitted in evidence plaintiffs re-offered the excluded leases, but the court adhered to its ruling that they were inadmissible, though also denying the motion of the defendant to exclude the checks and receipts, to which ruling the defendant excepted. (Rec., 38.) Defendant offered further to show, in connection with the checks and receipts, by witnesses present in the court room, that a general real estate and renting agency was conducted in the name of George F. Harding; that his son, George F. Harding, Jr., assisted by Mr. Van Meter, has, and for several years past has had, the entire charge of that agency; that rents are collected for the different owners, and in whatever name the checks come in for the different owners they are deposited in a common account in bank in the name of George F. Harding, but that accounts are kept by the agency with the different owners showing the rents collected from each piece of property, and accounts rendered to the different owners, and the rents divided between them. To the refusal of the court to receive this proof the defendant excepted. (Rec., 39-40.)

Thereupon George F. Harding, Jr., testified that he

is the son of the defendant; that he handles his father's business entirely and completely; that his father conducts a real estate and renting business at 155 and 157 Washington street through him and those associated with him in the renting agency, which collects his father's rents, and also collects, among others, the rents of the Chicago Real Estate Loan & Trust Company. (Rec., 40-43.) He further testified that *the checks and receipts admitted in evidence represented collections made* by this renting agency *for the Chicago Real Estate Loan & Trust Company,* a real estate company and corporation.

He also testified that he settles with John Callow at Monmouth, Illinois, as the representative of the Chicago Real Estate, Loan & Trust Company for the rents collected; that he himself signs 99 per cent. of the checks drawn against the account in bank in the name of his father, George F. Harding; that the said account, though in the name of his father, is in fact the account of the firm, the principal owners of which are his brother and himself; that his father checks a little out of the account, but that whatever he draws out is charged against him.

5.

THE PROPOSITIONS OF LAW.

The plaintiff presented no propositions of law. The defendant presented twelve, with request that they be held by the court. All were held as the law except the seventh, eighth, ninth and tenth, which were refused and exception preserved. The twelve propositions, together with the rulings of the court thereon, are shown in full on pages 102-103 of the record.

6.

HOW THE ISSUES WERE DISPOSED OF.

The court found the issues for the plaintiff and assessed the amount due at the sum of $2,123.05. (Rec., 13.) The defendant filed a written motion to set aside the finding and grant a new trial, together with statement of points in support of such motion, the same being printed in full on pages 104-106 of the record. The court denied the motion and entered judgment on the finding. (Rec., 13.) To all of these several rulings, including the finding and the judgment of the court and the overruling of motion for new trial the defendants made and duly preserved his exceptions. (Rec., 106.)

The finding and judgment for $2,123.05 were in exact accordance with the claim of plaintiff's counsel, Mr. Martin, on page 17 of the record, where said $2,123.05 is explicitly stated by said counsel to consist of $1,998.25 of *forfeitures and penalties*, and the residue ($124.80) of current taxes for 1900. "We let it stand," counsel there says, "on the collector's warrant for the year 1900, as the amount we claim due to the People of the State of Illinois, $2,123.05."

Turning to the collector's warrant of 1900 thus referred to and set forth on page 57 of the record, while counsel's figures will there be found verified, it will also be found that the said $1,998 amount falls under the heading "Aggregate of Back Taxes and Forfeitures," and is a footing made up of the items to the left of it on the same line, which are denominated by words prefixed to them as "Forfeitures for A. D. 1879 and Subsequent

Years." The same words reappear in the collector's warrants for 1897-8 and '99 (Rec., 45, 49, 53), prefixed to the items carried along and footed up under like headings of "Aggregate of Back Taxes and Forfeitures."

It thus appears that the judgment affirmed by the Supreme Court in this case is made up of about $125 of taxes for 1900 *not due until April* 1, 1901, *after this suit* was brought, and $1,998.70 of "forfeitures for 1879 and subsequent years," while it nowhere in the record appears who owned the property, or in whose name it was *assessed* in any one of the seventeen years between 1879 and 1896, nor what years the *forfeitures* were in or for, nor what was the amount of the same in each or any year, nor whether plaintiff in error owned or claimed title in each or any of said years.

In other words, no liability of plaintiff in error is shown for any part of the $1,998.70 "forfeitures for 1879 and subsequent years," nor for the $125 taxes for 1900, not even due when the suit was brought.

Whoever did own the property at the time it was *assessed* in each of said seventeen years was the person, and, plaintiff in error claims, was *the only person*, personally liable for that year's taxes, and *the only person*, who, in case of forfeiture for want of bidders, could be *personally* sued under Section 230 for the taxes and forfeitures of that year.

Section 59 of Chapter 120 of the Revenue Act will be relied on, which provides that *"the owner* of the property on the first day of May (now April 1st) *in any year* shall be *liable* for the taxes of *that* year" (not for the taxes of *any* OTHER year). And the opinion of the Supreme Court of Illinois will be relied on, wherein the

learned author of the opinion in the present case says of the remedy now resorted to:

> "It is absolutely a personal remedy, enforcible against the person owning the property on the first day of May *of the year for which the tax was levied,* AND AGAINST NO ONE ELSE."

It is, therefore, insisted that by the affirmance of the judgment in this case the Supreme Court of Illinois has arbitrarily held plaintiff in error, George F. Harding, *personally* liable for the debts of other persons who were alone liable therefor, and has also arbitrarily held him responsible for the acts and neglects of other persons who were alone responsible therefor, and that he is thereby deprived of his property without due process of law, in violation of rights guaranteed to him by the fourteenth amendment of the Federal Constitution.

Bill of exceptions was duly filed in the Circuit Court within the time allowed by orders of court, and is fully set forth in the record herein (15 to 107). Appeal to the Supreme Court of Illinois was duly perfected (Rec., 107), and errors assigned upon the record filed therein. (Rec., 108-109.) The assignments designated as errors the foregoing several admissions and exclusions of evidence, the finding of the issues for the plaintiff, the overruling of the motion to set aside the finding and grant a new trial, the rendering and entering of said judgment, the several refusals of propositions of law offered by defendant, and further urged as error that the finding and judgment were severally contrary to the evidence and contrary to the law, and also that they were erroneous for the several reasons stated in the points filed in the motion to set aside the finding and grant a new trial (Assignment 11; Rec., 108-109), among which points,

thus incorporated as part of said assignment 11, were those numbered 26 and 27, urging, respectively, that the statute under which this action was prosecuted is contrary to the Constitution of the United States, and *that* THIS PROCEEDING *under said statute is a taking of property* WITHOUT DUE PROCESS OF LAW, and *otherwise* unconstitutional. (Rec., 106.)

Briefs and arguments having been submitted on both sides, judgment of the Circuit Court was affirmed on February 18th, 1903, by a judgment of the Supreme Court reciting, *inter alia* (Rec., 111), that the court after the cause had been argued by counsel, had *diligently examined and inspected* the record and proceedings and *the matters and things therein assigned for error,* and ordered that the judgment aforesaid be affirmed, *notwithstanding, the said matters and things therein assigned for error.*

It would seem that these findings and recitals of *a judgment* ought to outweigh the argumentative inference of the *opinion* that the assignments relating to and relying upon constitutional points raised by the pleadings and various other proceedings during the trial, were waived and denied consideration.

The opinion appears on pages 111 to 113 of the record. While it does *infer* that the assignment against the constitutionality of the statute was waived, it does not, by way of inference or otherwise, attempt to say that there was any waiver of the 11th assignment (Rec., 109), so far as it incorporated point 27 in support of the motion for new trial (Rec., 106) and thereby presented as a distinct error, distinctly and separately charged, that "this *proceeding * * * is a taking of property without due process of law.*"

"This proceeding," plaintiff in error claims, under said assignment of error—as he claimed throughout the trial, against adverse rulings of the court,—was not a due and regular proceeding, not "due process of law," inasmuch as, despite his objections and exceptions, the court admitted evidence of back taxes and forfeitures running back to 1879, seventeen years *before* any evidence as to his owning the property, and also admitted evidence of taxes and forfeitures during four years *after* his conveyance of it in 1896, at the same time refusing to receive rebutting evidence offered by him to prove that he had never after 1896, acquired or become reinvested with any title, interest or possession of said property.

It is claimed on behalf of plaintiff in error, that his 11th assignment of error including as it does his constitutional objections, 26 and 27 (Rec., 106), to the *statute* and to *proceedings* such as were had under it, is reinforced by all the rest of his 14 assignments (Rec., 109), except the last, as every one of them points unmistakably, as so many specifications, to action and rulings of the trial court, which were in themselves contrary to due process of law and culminated in depriving him of his property without due process of law.

The present statement of the case cannot probably be better completed than by reprinting here for the convenie nce of the court, the petition for writ of error (Rec., 114-122), upon which said writ was granted and made to operate as a *supersedeas,* by the order of the chief justice of the Supreme Court of Illinois, reciting (Rec., 124) that it appeared from the petition, record and exhibits, that a federal question arising under the Constitution of the United

States and its amendments has been duly raised and preserved by the petitioner in said cause and *decided* against him in and by the Supreme Court of Illinois, as set forth in said petition, and it thus appearing that *one or more federal questions were involved, etc.*

Said petition omitting the title and signatures, is as follows:

To the Honorable the Chief Justice of the Supreme Court of the State of Illinois:

Your petitioner, George F. Harding, respectfully represents and shows that he is a citizen of the United States, and was personally served with process of summons in the County of Cook, in the State of Illinois, on the 28th day of September, 1901, in a certain action in debt brought and then pending in the Circuit Court of the said County of Cook by the said The People of the State of Illinois, as plaintiff, against your petitioner, as defendant, further particulars of which suit will be hereinafter shown. On July 7th, 1902, a judgment was rendered by the said Circuit Court in the said suit in favor of the plaintiff therein and against your petitioner as defendant for the sum of $2,123.05, as shown by the transcript of record duly certified by the clerk of the Supreme Court of Illinois and now presented with this petition, to which record reference is made, as well as to the printed abstract of said record also duly certified and presented with this petition, and the same are hereby made a part of this petition.

2. From the said judgment of the said Circuit Court your petitioner duly prosecuted his appeal to the Supreme Court of Illinois, and the said judgment was affirmed by the said Supreme Court on February 18th, 1903, as appears from page 155 of the said record; and on the same day the said Supreme Court filed in its opinion in said

cause, which opinion is shown in full on pages 156 to 158, inclusive, of said record; that afterwards, to wit, on the 14th day of March, 1903, being within the time allowed by the rules of the said Supreme Court of Illinois for the filing therein of a petition for rehearing in said cause, your petitioner filed therein his petition for rehearing in said cause, a copy of which petition duly certified is presented with this petition and the same is hereby referred to as a part of this petition.

3. The declaration filed in said cause on March 11th, 1901, is fully shown in the said record and on pages 2 to 4, inclusive, of said abstract, and, as appears from said declaration, the said action was brought under and by virtue of section 230 of the act of the legislature of Illinois entitled "An act for the assessment of property and for the levy and collection of taxes," approved March 30th, 1872, in force July 1st, 1872. (3 Starr & Curtis Stat., page 3501, paragraph 232.) Section 59 of the same revenue act (3 Starr & Curtis Stat., page 3426) provides that "the owner of property on the first day of May in any year, shall be liable for the taxes of that year;" and section 8 of the act of said legislature entitled "An act for the assessment of property and providing the means therefor, and to repeal a certain act therein named," approved February 25th, 1898, and in force July 1st, 1898 (4 Starr & Curtis Stat., page 1110), provides that "the owner of property on the first day of April in any year, shall be liable for the taxes of that year;" and section 55 of the said last named act (4 Starr & Curtis Stat., page 1124), provides that "all the provisions of the general revenue law in force prior to the taking effect of this act shall remain in force and be applicable to the assessment of property and collection of

taxes except in so far as by this act is otherwise expressly provided."

4. As appears from the said record, and as shown on page 5 of said abstract, among the defences set up by your petitioner, in his pleadings, against the said suit, were the point that the said statute on which the said suit is brought is contrary to the Constitution of the United States, and is a taking of property without due process of law, and the further point that your petitioner the defendant in said suit, did not own the real estate described in the said declaration as alleged therein, namely, in the year 1897, or the year 1898, or the year 1899, or the year 1900; and as shown in said record, and as appears from pages 58 to 61, inclusive, of the said abstract, the said Circuit Court held on the trial of said cause in its several propositions of law marked "held" in said cause that the deed in evidence (Abst., 57) of George F. Harding (your petitioner) as grantor, to the Chicago Real Estate Loan & Trust Company, as grantee, dated June 10th, 1896, and recorded July 2nd, 1896, was a valid and sufficient conveyance of all interest of the grantor (your petitioner) at the time of the making of the said deed by your petitioner in or to the real estate described in the said declaration, and that the burden was on the said plaintiff in said suit to show a re-vesting of title or interest in or to the said real estate, in said George F. Harding (your petitioner) subsequent to the making of the said deed; and as further appears from the said record, and as shown on pages 62 to 66, inclusive, of the said abstract, among the points urged by your petitioner in support of his motion to set aside the finding of the court and grant a new trial in said cause, were those numbered 26 and 27

therein, insisting that the said statute above referred to is contrary to the Constitution of the United States, and that the said suit brought under the said statute is a taking of property without due process of law and otherwise unconstitutional; and as appears from the said record, and as is shown on page 68 of said abstract, among the assignments of error in said cause by your petitioner in the said Supreme Court of Illinois, was the assignment that the finding and judgment of the court were erroneous for the several reasons stated in the said points filed in support of the said motion to set aside the said finding and grant a new trial in said cause and that said Circuit Court erred in not granting said motion; and in the first brief and argument filed for appellant in the State Supreme Court (a duly certified copy of which is presented with this petition, and the same is hereby referred to and made a part thereof) on page 8, among the points stated as those relied on for a reversal of said judgment was the point that the said statute on which the said suit was based was contrary to the Constitution of the United States for the reason that the legislature has no authority to make a tax on real estate a personal liability to be collected by an action of debt, and that remedy of the state must be limited to the taking of the property on which the tax is assessed; and on page 12 of the same brief and argument the same point is again raised and again on page 26 thereof; and in the reply brief and argument filed for appellant in the said Supreme Court (a duly certified copy of which is presented with this petition and the same is hereby referred to and made a part of this petition), on page 34 the same point is again referred to, as was also done on pages 27 and 28 of the said petition of appellant for a rehearing in the said Supreme Court.

5. As appears from the said record, and as shown on pages 12 to 14, inclusive, of said abstract, your petitioner on the trial of the said action in the said Circuit Court offered in evidence a duly certified copy of the said deed made by him to the Chicago Real Estate Loan & Trust Company dated June 10th, 1896, and recorded July 2nd, 1896, purporting to convey all interest of the grantor in lots and lands of every description in the City of Chicago (or elsewhere in the State of Illinois) to the said grantee, and no objection to the said deed in evidence was made upon the ground that the same was colorable or fraudulent and as appears later in said record and as shown on page 21 of said abstract, said deed later in said trial was admitted in evidence without any objection or exception on the part of the plaintiff in the said suit, and, as further appears from the said record and as shown on pages 16 and 17 of said abstract, the said trial court and the counsel for said plaintiff in the trial of said cause conceded that the said deed was a valid conveyance, and, as further appears from the said record and as shown on pages 58 to 61, inclusive, of the said record, the trial court in its several propositions of law in said cause held that the said deed was a valid and sufficient conveyance, and none of such holdings were objected to or excepted to by the counsel for plaintiff in said suit and as then shown, the said trial court held in said propositions of law that the burden was on the plaintiff in said cause to show a re-vesting of title or interest in or to the said lot in your petitioner subsequent to the making of said conveyance, and none of such holdings were objected to or excepted to by the counsel for plaintiff in said suit.

6. There was no proof upon the trial of said cause in

any way tending to prove a re-vesting of any title or interest in or to said lot in your petitioner subsequent to the making of the said deed above referred to, and upon the trial of said cause your petitioner repeatedly offered to prove affirmatively that there had been no such re-vesting of any title or interest in or to said lot in him, but said proof was rejected by the said trial court at the instance of the counsel for said plaintiff in said cause upon the ground that such proof was not needed; the said conveyance having been held as valid, as above shown, and being conceded to be valid by counsel for plaintiff in said trial, as above shown, and to such rejection of proof your petitioner duly preserved his exceptions, and assigned the same as grounds for a new trial, and assigned the same as error in said Supreme Court and insisted upon the same as error in his said arguments and briefs in the said Supreme Court, and in his said petition for rehearing, as will more fully appear from the said record, and as shown on pages 14, 15, 16, 17, 18, 19, 29, 58, 68, of the said abstract and on pages 3, 4, 9, 17, 19 and 28 of said first above named brief and argument and on pages 3, 14, 20, 22, 23, 25, 26 and 35-37 of said reply brief and argument, and on pages 22-25 of said petition for rehearing.

7. The said Supreme Court of Illinois in its said opinion in this cause erroneously held that "the tax records of Cook County for the year 1898, offered by the People, tended to prove ownership in the defendant. The items in the tax warrant for the year 1897 on this property were charged to him and merged into a judgment. He appeared in the County Court and objected to the validity of the tax, but judgment was rendered against him as owner. This was subsequent to the date of the deed.

His remedy as to that tax, if levied unjustly against him, was by appeal. (*Biggins* v. *People,* 106 Ill., 270.) As to that tax he clearly could not in this proceeding attack the validity of the former judgment." The errors in this holding by the Supreme Court are (first) that the said tax record for the year 1898, being the tax warrant of that year issued for collection of taxes of 1897 and being shown on pages 70 and 71 of the said record presented with this petition, *in no way refers to any judgment in the County Court or to any proceeding in the County Court whatsoever, and no judgment of the said County Court in or for the year* 1898, *or in or for the year* 1897, *was received in evidence or offered in evidence, and there is no evidence anywhere in the record that the taxes of* 1897 *were charged against your petitioner as owner or otherwise and merged in a judgment.* Second. Your petitioner did not appear in the said County Court *as owner* in the year 1898, but, as appears from the said record, and as shown on page 56 of the abstract, his attorney, joining his (your petitioner's) name with the Chicago Real Estate Loan & Trust Company, the grantee in the general deed, and joining also another party as one of the objectors, filed objections to judgment in the County Court reciting that the said objectors were jointly and severally the owners of or interested in the lots and lands described in the objections, being a long list embracing this lot in question, and it nowhere appears in this record what became of such objections made in said County Court, by both the grantor and grantee in the said deed and another. So far as this record shows, the said objections may have been withdrawn, or they may have been sustained by the County Court, there being no proof whatever as to what action was had in the County

Court, and much less any proof of any judgment being rendered against any one as owner or otherwise or even against the property. Besides such judgment of the County Court, if any were rendered, would only relate to the taxes of 1897, being a very small part of the present judgment against your petitioner. It will be seen that all these points were insisted on in the said petition for rehearing.

8. The said opinion of the Supreme Court in this cause further states that after the date of the said general deed the grantor therein received the rents from the said property and deposited the money in bank and thus continued after the *"pretended"* conveyance to deal with the premises as his own, and that "in the light of all the evidence in the case it is very clear that the conveyance of June 10th, 1896, was merely colorable, and not executed with the honest purpose of conveying the ownership in the property to the grantee," thus wholly ignoring the fact that the conveyance was admitted to be valid and effectual by the plaintiff's counsel on the said trial and held valid and effectual by the said trial court as above shown without objection or exception on the part of counsel for plaintiff and further ignoring the fact that there was no basis in the pleadings for the trial of any issue as to the said conveyance being fraudulent, or colorable, or dishonest, or inoperative, or ineffectual, or as to its not being executed with an honest purpose, the authorities being universal that such conveyance is valid and carries the title unless attacked in a proper proceeding by proper pleadings by a party having the right to question its validity or its character.

9. It thus appears that the Supreme Court of Illinois in and by its said opinion and judgment in this cause,

without the slightest proof even tending to show a revesting of any title or interest in or to said lot in the said grantor (your petitioner) subsequent to the making of the said general deed conceded to be valid and held valid as above shown, and in spite of the repeated offers of your petitioner, as above shown, to affirmatively prove that no interest in or to said lot was ever acquired or received by him subsequent to the making of said deed, and in spite of the fact that such deed was not attacked either by pleadings or proof in said cause and no issue was presented under which it could be attacked,—yet said Supreme Court erroneously held and declared and adjudged that the said deed was colorable and did not pass title, and that therefore your petitioner remained the real owner of said lot and was hence liable in the said action for the amount of said judgment, and further erroneously held and declared in its said opinion that your petitioner had waived his right to call in question the constitutionality of said act or of said proceedings thereunder.

For the purpose of a more detailed and perfect showing of the questions involved and raised and decided, and of the entire situation in this cause, your petitioner asks that the said transcript of record showing, among other things, the denial of your petitioner's petition for rehearing on the 24th day of April, 1903, and the said opinion of said Supreme Court and its said judgment of affirmance, and the said abstract of record and the said two printed briefs and arguments and the said petition for rehearing be deemed and treated as a part of this petition for writ of error.

And so it is that your petitioner claims and shows that in and by the said action and judgment of the said

Circuit Court of Cook County and in and by the said action and opinion and judgment of the said Supreme Court of Illinois, your petitioner's rights under the Constitution of the United States and its amendments have been invaded and disregarded and denied in that he has thus been and is deprived of the rights, privileges and immunities secured to him by said constitution and its amendments and deprived of property without due process of law and deprived of the equal protection of the laws guaranteed to him by the said constitution and its amendments, particularly by the fourteenth amendment to the said constitution, and his property taken without due process of law, and he deprived of equal protection of the laws contrary to section 1 of the fourteenth amendment to said constitution, all of which rights and privileges and immunities were duly insisted upon in these proceedings by your petitioner, as above shown, and as to all of which the decision and action and judgment of the said Circuit Court and the opinion and action and judgment of the said Supreme Court have been and are against your petitioner and against his petitions and contentions and in favor of the validity of said statute and of said proceedings and against the said rights, privileges and immunities of your petitioner and to the damage and prejudice of your petitioner and contrary and repugnant to the Constitution of the United States and its amendments; and your petitioner claims and insists that not only is said statute contrary to the Constitution of the United States and the said proceedings thereunder, but particularly the said action of the said Supreme Court of Illinois in basing its decision against your petitioner on an issue not raised or even hinted at in the pleadings in said cause, namely, as to the character and purpose and

effect of the said general deed, and without an opportunity of your petitioner to be heard on such an issue either in pleadings or in brief or in argument, and while at the same time rejecting and ignoring the repeated offers of your petitioner to prove that he had not acquired or received any right, title or interest in or to the said lot in question since the making of the said deed, and the holding of your petitioner liable for the said taxes assessed against the said lot at a time when your petitioner had no interest therein, and liable for said forfeitures at the time your petitioner had no interest in said lot, as shown by the undisputed proof, all this your petitioner respectfully claims and insists is in violation of the Constitution of the United States and its amendments in the particulars above named and otherwise.

Wherefore your petitioner prays that a writ of error be allowed in said cause to remove the same from the said Supreme Court of Illinois to the said Supreme Court of the United States, and that he be permitted to give a bond with such conditions and in such amount and with such surety as may be required, and that upon the giving of such bond, it be ordered that the said writ of error operate as supersedeas in said cause and that a citation issue according to law, and for such other and further and different relief in the premises as may be proper under the law and under the rules of the said Supreme Courts.

And your petitioner will ever pray, etc.

Dated June 1, 1903.

ASSIGNMENT OF ERRORS.

IN THE SUPREME COURT OF THE UNITED STATES.

Now comes George F. Harding, plaintiff in error in the above entitled cause, and says that by the foregoing record the said Supreme Court of Illinois is shown to have erred in said cause, as follows:

1. In affirming the said judgment of the said Circuit Court of Cook County, Illinois.

2. In not reversing the said judgment.

3. In not holding the said statute under which the said suit is brought invalid by reason of its being contrary to the Constitution of the United States.

4. In not holding that the said statute, namely, Section 230 of the Act of the legislature of Illinois entitled "An Act for the Assessment of Property and for the Levy and Collection of Taxes," approved March 30, 1872, in force July 1, 1872, was and is a provision for the taking of property without due process of law, and for a deprivation of the rights, privileges and immunities secured to the citizens of the United States, including the plaintiff in error herein, by the said constitution and its amendments, and a deprivation of the equal protection of the laws guaranteed to the said citizens, including the said plaintiff in error, by the said constitution and its amendments, particularly by the fourteenth amendment to the said constitution, and especially Section 1 of the said fourteenth amendment, all of which rights, privileges and immunities were duly insisted upon in these proceedings by the said plaintiff in error and as to all of which the decision and action and judgment of the said Circuit

Court of Cook County in said cause and the opinion and action and judgment of the Supreme Court of Illinois were and are against the said plaintiff in error and against his contentions in said cause and in favor of the validity of the said statute and said proceedings and against the said rights, privileges and immunities of the plaintiff in error and to his damage and prejudice and contrary to and repugnant to the said Constitution of the United States and its amendments, particularly those portions thereof above referred to.

5. The said Supreme Court of Illinios further erred in basing its decision and opinion in said cause, and its judgment therein, on an issue not raised or even hinted at in the pleadings in said cause, namely, as to the character and purpose and effect of the said general deed or conveyance in evidence in said cause made by the said plaintiff in error as grantor to the Chicago Real Estate Loan and Trust Company as grantee, dated June 10, 1896, and duly recorded on July 2, 1896, without an opportunity to said plaintiff in error to be heard on such issue either in pleading or in proof or in argument, and while at the same time rejecting and ignoring the repeated offers of the plaintiff in error to prove upon the trial of said cause that he had not acquired or received any right, title or interest in or to the said lot in question since the making of the said deed, and holding the plaintiff in error liable for the taxes assessed against the said lot and forfeitures thereon at a time when he had no interest in the said lot as shown by the undisputed proof in said cause, all of which was and is in violation of the Constitution of the United States and its amendments in the particulars above named and otherwise.

6. The said Supreme Court further erred in said

cause in basing its decision and opinion and judgment therein upon an issue and point in no way raised or hinted at in the pleadings or the proof or in the contentions of the parties to said suit, namely, upon the point that the said general deed was colorable or dishonest, thus deciding the entire case upon an issue never raised and never heard and never tried and in no way involved in the case, thus depriving the plaintiff in error of the equal protection of the laws and of the rights to be heard in pleadings and proof on such issue and thus taking his property without due process of law, all in violation of the said Constitution of the United States and its amendments.

7. The said Supreme Court of Illinois erred in holding and deciding in said cause that the tax records of Cook County, Illinois, offered by the defendant in error upon the trial of said cause tended to prove ownership of the said lot in question by the said plaintiff in error; and in holding and deciding that the items in the tax warrant for the year 1897 on the said property were charged to the plaintiff in error and merged into a judgment; and in holding and deciding that the plaintiff in error appeared in the County Court of said county and objected to the validity of the tax and that judgment was rendered against him as owner—all of these several holdings and decisions being contrary to the undisputed proof in the said cause and therefore a taking of property without due process of law and a deprivation of the equal protection of the laws and a violation of the said Constitution of the United States and its amendments in these particulars and in the other particulars above named, there being no proof whatever in said record of any judgment in the said County Court in or for the

said years 1897 or 1898 and no proof whatever that the said taxes or any part thereof were ever merged in a judgment against the plaintiff in error as owner or otherwise or charged against him as owner or otherwise, and there being no proof that the plaintiff in error objected to the said tax in the said County Court as owner of the said lot.

8. The said Supreme Court of Illinois further erred in said cause in holding and declaring and adjudging that the said conveyance was colorable and did not pass title to said lot and that therefore the plaintiff in error remained the real owner of the said lot and liable as such owner for the amount of the said judgment, such holding and decision and judgment being without the slightest proof in said record even tending to show a revesting of any title or interest in or to the said lot in the plaintiff in error subsequent to the making of the said conveyance, which conveyance was conceded upon the trial of said cause to be valid and held valid by the said trial court and was not attacked by either pleadings or proof on such trial, and no issue was presented under which it could be attacked, and on the said trial the plaintiff in error repeatedly offered to prove that no interest in or to said lot was ever acquired or received by him subsequent to the making of said conveyance, which offers of proof were rejected by the said trial court, and exceptions of the plaintiff in error were duly preserved to such rulings, and the same were duly assigned as error in the said Supreme Court of Illinois and insisted on there by the plaintiff in error as grounds for the reversal of the said judgment, from all of which it duly appears that the plaintiff in error has been thus deprived of property without due process of law and deprived of the equal protec-

tion of the laws and his rights, privileges and immunities secured to him under the Constitution of the United States and its amendments, thus invaded, disregarded and denied.

9. Said Supreme Court of Illinois further erred in said cause upon the grounds and for the reasons stated and shown in and by the petition of the plaintiff in error under date of June 1, 1903, addressed to the Chief Justice of the Supreme Court of Illinois and duly filed in this cause, and the suggestions and brief attached to and filed with the said petition, all of which are for greater certainty hereby referred to and made a part of this Assignment of Errors.

10. The said Statute of Illinois under which this action is brought as construed by the Supreme Court of Illinois in its opinion and judgment in this present suit makes the plaintiff in error personally liable in this action for the taxes levied and assessed in the years 1879 to 1896, inclusive, against the said lot, without any proof showing or tending to show ownership of said lot by the plaintiff in error at any time prior to the making of said deed dated June 10, 1896, and the said statute as thus construed is therefore in violation of the said Constitution of the United States and of the several amendments thereto, above referred to, and is a taking of property without due process of law and a denial to the plaintiff in error of the equal protection of the laws and of his other rights, privileges and immunities secured to him by the provisions of the said constitution and of said amendments thereto, and the Supreme Court of Illinois therefore erred in its said judgment and ought to have held the said statute invalid by reason of its being in violation of the said constitution and the said amendments in the particulars above shown.

11. The said statute of Illinois as construed by the opinion and judgment of the Supreme Court of Illinois in this present proceeding holds the plaintiff in error personally liable in this action for the taxes levied and assessed against the said lot in the years 1897 to 1900, inclusive, notwithstanding the affirmative and undisputed proof that the plaintiff in error had no interest in or to the said lot subsequent to the making of the said deed of June 10th, 1896; and the said statute as thus construed is in violation of the said Constitution of the United States and of the several amendments thereto, above referred to, and the said statute and said proceedings thereunder are a denial to the plaintiff in error of the equal protection of the laws and of his other rights, privileges and immunities secured to him by the provisions of the said constitution and of said amendments thereto, and are a taking of property without due process of law; and the Supreme Court of Illinois therefore erred in its said judgment and ought to have held the said statute invalid by reason of its being in violation of the said constitution and of the said amendments in the particulars above shown.

12. As clearly appears from the opinion of the Supreme Court of Illinois in this cause, that court based its said decision against the plaintiff in error in the said cause on the alleged ground that the said deed of June 10th, 1896, was merely colorable and not made for an honest purpose and did not carry to the grantee named therein all interest of the said grantor, the plaintiff in error, in and to the said lot at the time of the making of said deed, notwithstanding the fact that the making and delivery of said deed was duly proved and was undisputed, and its validity and effect as a conveyance

was expressly conceded by the counsel for the defendants in error on the trial of said cause and its validity and effect as a conveyance was held by the trial court in its propositions of law without objection or exception by the counsel for defendants in error, and no issue was presented either in the pleadings or proof attacking the validity or effect of the said deed as a conveyance or relating in any way to the character or purpose or effect of the said deed, and no pleadings were presented under which proof upon any of these questions would be admissible, and the said action of the said Supreme Court of Illinois in thus holding the said deed invalid and inoperative as a conveyance without any pleadings under which such issue or such questions could or did arise and without an opportunity to the plaintiff in error to be heard thereon, either in pleadings or in proof or in argument, was and is a taking of property without due process of law and a denial to the plaintiff in error of the equal protection of the laws, and a denial to him of the rights, privileges and immunities secured to him by the said Constitution of the United States and its amendments, and was and is in these several particulars and otherwise in violation of the said constitution and of the amendments thereto above referred to, and was therefore error on the part of the said Supreme Court of Illinois.

13. As appears from the provisions of the said Statute of Illinois and from the declaration in this suit and from the plea interposed by the plaintiff in error, and the notice of his defences filed with said plea, and from the propositions of law held in said cause, and from the said opinion of the said Supreme Court of Illinois in said cause, and from other portions of the record in this cause, a vital and material issue in said cause was as to

the ownership of the said lot in question by the plaintiff in error in the years 1897, 1898, 1899 and 1900, and the said deed of June 10th, 1896, having been admitted in evidence, and its validity and effect as a conveyance having been expressly conceded by the counsel for the defendants in error, and its validity and effect as a conveyance having been held by the trial court, the plaintiff in error thereupon had the right under the Constitution of the United States and its amendments, to show affirmatively on the trial of said cause, that he, the plaintiff in error, had never received or acquired any interest whatsoever in or to the said lot subsequent to the making of the said deed of June 10th, 1896; and the refusal of the trial court to receive such proof offered by the plaintiff in error was a violation of the said constituitional rights of the plaintiff in error, and the plaintiff in error having duly made and preserved his exceptions to the said action of the said trial court, and having duly assigned the same in the Supreme Court of Illinois as error upon the part of the trial court, the failure of the Supreme Court of Illinois to hold the same as error and on that ground reverse the said judgment of the said trial court was a denial to the plaintiff in error of his constitutional rights; and the said action of the said Circuit Court and of said Supreme Court of Illinois were each a taking of property without due process of law, and a denial to the plaintiff in error of the equal protection of the laws and a denial to him of the rights, privileges and immunities secured to him by the said constitution and its said amendments, and therefore contrary to the said constitution of the United States and its amendments, in these particulars, and was therefore error upon the part of the said trial court and upon the part of the said Supreme Court of Illinois, respectively.

14. The holding and decision of the Supreme Court of Illinois in its said opinion and judgment in this cause, as appears from the said opinion and the said judgment, that the point in relation to the said constitutionality of the said statute had been waived by the plaintiff in error, was error upon the part of the said Supreme Court of Illinois, for it appears from pages 16 and 17 of the transcript of record herein, and from pages 5 and 6 of the printed abstract of said record filed in the Supreme Court of Illinois in said cause, and now duly certified by the clerk of that court as a part of the present record in this cause, that the plaintiff in error duly raised the said point as to the constitutionality of the said statute in his notice of defences filed with his plea in said cause; and it further appears from pages 142 to 146, inclusive, of said transcript of record, and from pages 62 to 66, inclusive, of said printed abstract, that the points numbered 26 and 27 in support of the motion for new trial, made by plaintiff in error, expressly raised the question that the said statute is a taking of property without due process of law, and is otherwise in violation of the Constitution of the United States, while point number 25 in support of the said motion for new trial, raised the question as to the constitutionality of said statute under the constitution of Illinois and as appears from page 147 of the said transcript of record and page 67 of said printed abstract, the plaintiff in error duly excepted to the overruling of the said motion for new trial and to the finding and judgment of the trial court; and it further appears from pages 151 and 152 of the said transcript of record and from pages 67 and 68 of said printed abstract, that the eleventh assignment of error in the Supreme Court was that the finding and judgment of the trial

court "were erroneous for the several reasons stated in the points filed in support of the motion to set aside the finding and grant a new trial;" and it appears from the first brief and argument filed for plaintiff in error in the Supreme Court of Illinois in said cause that the said point was duly raised and presented near the end of page 8 thereof and again near the middle of page 12; and in the paragraph numbered 13 on page 10, the formal statement of points filed in support of motion for new trial and the formal assignment of errors are referred to "for further and more detailed statement of points relied on for reversal;" and on page 15, the said brief, in closing, refers to the argument commencing on the next page "for further statement of points;" and on page 26, near the end of that page, it is stated that the questions raised as to the constitutionality of the statute are submitted "without further argument." The said brief and argument filed in the Supreme Court has been duly certified by the clerk of that court as a part of the present record and the same is hereby referred to for greater certainty as a part of these assignments of error. And below the middle of page 34 of the reply brief and argument for the plaintiff in error, which was filed in said Supreme Court of Illinois in said cause and which has been duly certified by the clerk of that court as a part of this present record, and which is hereby referred to and made a part of these assignments of error, the statement is made by counsel for plaintiff in error that "as to our contentions * * * as to the unconstitutionality of the statute, these contentions, we think, are sufficiently stated in our former brief and argument." And, beginning near the end of page 27 and ending on page 28 of the petition for rehearing filed by the plaintiff in error in the

said Supreme Court of Illinois in said cause, which petition for rehearing has been duly certified by the clerk of that court as a part of this present record, it was stated as follows, namely; "Appellant (now plaintiff in error) wishes to be understood as insisting on, not as waiving, his assignments of error grounded upon the refusal of the trial court to hold the statute on which this action is based to be contrary to the constitution of Illinois and to the Constitution of the United States, respectively * * *. Insistence on these assignments appeared on page 8 of the first brief. * * * The questions were raised and are preserved by the objections to jurisdiction, motion to dismiss this suit, by the pleadings, in the propositions of law, in the motion for new trial, and by the assignment of errors."

15. The said Supreme Court erred in denying the said petition of the plaintiff in error for a rehearing in said cause.

16. The said denial of the said petition for rehearing was in violation of the Constitution of the United States and its amendments in the particulars already referred to in these assignments of error.

17. The said finding and judgment of the said Circuit Court of Cook County, Illinois, and the affirmance of the said judgment by the Supreme Court of Illinois, were, respectively, contrary to the undisputed evidence in said cause, and contrary to the law, and the same were and are, respectively, in violation of the Constitution of the United States and its said amendments, in the particulars above referred to in these assignments of error.

Wherefore, the plaintiff in error, herein, prays that the said proceedings and final judgment of the Supreme

Court of Illinois herein, be reviewed by the Supreme Court of the United States; and that the final judgment of the said Supreme Court of Illinois, and its order denying the said petition for rehearing in said cause, and the said judgment of said Circuit Court of Cook County, Illinois, be respectively reversed and set aside, and that the Supreme Court of the United States will grant and enter herein such further or other and different orders and directions herein as law and justice in the premises may require.

POINTS.

I.

THE PROHIBITIONS OF THE FOURTEENTH AMENDMENT REFER TO ALL THE INSTRUMENTALITIES OF THE STATE, TO ITS JUDICIAL AS WELL AS TO ITS EXECUTIVE AND LEGISLATIVE AUTHORITIES.

Chicago, Burlington & Quincy R. R. Co. v. *Chicago*, 166 U. S., 226, 233.

Ex parte Virginia, 100 U. S., 339, 346-7.

Yick Wo v. *Hopkins*, 118 U. S., 356.

II.

IT IS SUFFICIENT IF IT APPEARS FROM THE RECORD THAT A RIGHT CLAIMED UNDER THE FEDERAL CONSTITUTION WAS SPECIALLY SET UP OR CLAIMED IN THE STATE COURT IN SUCH MANNER AS TO BRING IT TO THE ATTENTION OF THE COURT. THE RIGHT MAY BE ASSERTED BY PLEADINGS, OR ON MOTION TO SET ASIDE VERDICT AND GRANT A NEW TRIAL, STATING, AS GROUNDS THEREFOR, THAT THE SEVERAL RULINGS OF THE COURT IN EXCLUDING PROPER EVIDENCE FOR THE DEFENDANT, THE STATUTE UNDER WHICH THE PROCEEDINGS WERE INSTITUTED, THE VERDICT AND THE JUDGMENT BASED UPON IT WERE ALL CONTRARY TO THE CONSTITUTIONAL PROVISIONS OF THE FOURTEENTH AMENDMENT.

Chicago, Burlington & Quincy R. R. Co. v. *Chicago*, 166 U. S., 231.

III.

WHEN THE TRIAL COURT OVERRULED THE MOTION FOR NEW TRIAL, STATING GROUNDS SUCH AS THOSE MENTIONED UNDER POINT II. AND ENTERED JUDGMENT, IT NECESSARILY HELD ADVERSELY TO THE CLAIMS OF FEDERAL RIGHTS DESIGNATED IN SAID STATED GROUNDS.

Chicago, Burlington & Quincy R. R. Co. v. *Chicago*, 166 U. S., 231.

IV.

DUE PROCESS OF LAW IMPLIES THE RIGHT OF THE PERSON AFFECTED, NOT ONLY TO BE PRESENT BEFORE THE TRIBUNAL WHICH PRONOUNCES JUDGMENT, BUT ALSO TO BE HEARD BY TESTIMONY IN PROOF OF ANY FACT WHICH WOULD BE A PROTECTION TO HIM AND HIS PROPERTY, AND TO HAVE THE RIGHT OF CONTROVERTING, BY PROOF, EVERY MATERIAL FACT WHICH BEARS ON THE QUESTION OF RIGHT IN THE MATTER INVOLVED. THE LAW OF THE LAND REQUIRES AN OPPORTUNITY FOR TRIAL; AND THERE CAN BE NO TRIAL IF ONLY ONE PARTY IS SUFFERED TO PRODUCE HIS PROOFS.

Cooley Const. Lim., 368-9.

Zeigler v. *South, etc., Ala. R. Co.*, 58 Ala., 594.

Calhoun v. *Fletcher*, 63 Ala., 574.

State v. *Billings*, 55 Minn., 475.

Hovey v. *Elliott*, 167 U. S., p. 414.

Windsor v. *McVeigh*, 93 U. S., 274.

McVeigh v. *U. S.*, 11 Wall., 267.

V.

PLAINTIFF IN ERROR IS DEPRIVED OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW BY THE JUDGMENT AFFIRMED IN THIS CASE, BECAUSE HE WAS DENIED THE RIGHT TO PROVE BY EVIDENCE OFFERED IN REBUTTAL THAT HE NEVER RE-ACQUIRED, OWNED, WAS INTERESTED IN, OR POSSESSED OF, THE PROPERTY INVOLVED AFTER HE CONVEYED IT AWAY BY THE DEED OF JUNE 1896.

See authorities under previous points.

VI.

THERE BEING NO AVERMENT IN THE DECLARATION, NOR ANY EVIDENCE WHATEVER THAT THE PLAINTIFF IN ERROR OWNED THE PROPERTY IN ANY YEAR FROM 1879 TO 1896, OR THAT IT WAS ASSESSED IN HIS NAME DURING ANY ONE OF SAID SEVENTEEN YEARS, AND IT BEING PROVED BY THE RECORD THAT FORFEITURES COVERING THOSE YEARS MAKE UP THE BULK OF THE JUDGMENT AFFIRMED, ALL OF IT IN FACT EXCEPT ABOUT $125 OF TAXES OF 1890, NOT DUE WHEN THIS SUIT WAS BEGUN, THE ENTRY AND AFFIRMANCE OF SAID JUDGMENT WITHOUT PLEADINGS OR PROOFS ARE SEVERALLY DENIALS OF DUE PROCESS OF LAW WHEREBY PLAINTIFF IN ERROR IS DEPRIVED OF HIS PROPERTY IN VIOLATION OF THE SEVERAL PROVISIONS OF THE FOURTEENTH AMENDMENT OF THE FEDERAL CONSTITUTION.

See citations under previous points.

VII.

ANY ACT OF THE LEGISLATURE OR ACTION OF THE COURTS WHICH ARBITRARILY TAKES AWAY THE PROPERTY OF A AND GIVES IT TO B, OR MAKES ONE PERSON LIABLE FOR THE DEBTS OR ACTS OF ANOTHER, DEPRIVES HIM OF DUE PROCESS OF LAW.

Camp v. *Rogers*, 44 Conn., 291.
Loan Association v. *Topeka*, 20 Wall., 663.
C. B. & Q. R. R. Co. v. *Chicago*, 166 U. S., 237.

The only persons personally liable under section 230 for taxes assessed from 1879 to 1896, were those owning the property in those several years at the times of such assessments.

Biggins v. *The People*, 96 Ill., 381.
The People v. *Winkelmman*, 95 Ill., 412.
Greenwood v. *Town of La Salle*, 137 Ill., 230.
Sec. 230, Chap. 120, of Revised Statute of Illinois, 3 Starr & Curtis Stat., pp. 3501-02, especially last seven lines of said section.
Sec. 58 and 59 of same chapter, 3 Starr & Curtis Stat., 3425-6.

The judgment affirmed in this case therefore makes the plaintiff in error liable for the debts and neglects of other persons. The rights of plaintiff in error under the provisions of the fourteenth amendment are violated by the judgment as entered and affirmed, and by the said section 230, as construed, administered and enforced thereby.

VIII.

THE ACTION OF THE SUPREME COURT OF ILLINOIS IN BASING ITS DECISION OPINION AND JUDGMENT UPON AN ISSUE AND POINT IN NO WAY RAISED OR HINTED AT IN THE PLEADINGS OR THE PROOF OR IN THE CONTENTIONS OF THE PARTIES, NAMELY, THE POINT THAT THE GENERAL DEED OF JUNE 10TH, 1896, WAS COLORABLE AND DISHONEST, DEPRIVED PLAINTIFF IN ERROR OF ALL RIGHT AND OPPORTUNITY TO BE HEARD IN PLEADINGS AND PROOF ON SUCH ISSUE AND WAS A TAKING OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS UNDER THE SAID FOURTEENTH AMENDMENT.

See citations under point IV.

IX.

THE ACTION OF SAID STATE SUPREME COURT, AS ABOVE FULLY SET FORTH IN POINT VIII, WHILE AT THE SAME TIME IGNORING OR SANCTIONING THE REJECTION BY THE TRIAL COURT OF THE REPEATED OFFERS OF PLAINTIFF IN ERROR TO PROVE UPON THE TRIAL THAT HE HAD NOT RE-ACQUIRED ANY RIGHT, TITLE, INTEREST OR POSSESSION OF SAID PROPERTY AFTER THE MAKING OF SAID DEED AND HOLDING HIM LIABLE FOR TAXES ASSESSED AGAINST THE SAME AND FORFEITURES THEREON DURING THE YEARS 1897-98-99 AND 1900, WHEN HE IS SHOWN TO HAVE HAD NO INTEREST IN SAID LOT, WAS A DEPRIVATION WITHOUT DUE PROCESS OF LAW OF PLAINTIFF IN ERROR'S RIGHTS OF PROPERTY AND OTHER RIGHTS SECURED TO HIM BY THE SEVERAL PROVISIONS OF SAID FOURTEENTH AMENDMENT.

X.

AS THE MAKING AND DELIVERY OF THE SAID DEED OF JUNE 10TH, 1896, WERE DULY PROVED AND UNDISPUTED, AND ITS VALIDITY AND EFFECT AS A CONVEYANCE WERE HELD BY THE TRIAL COURT IN ITS PROPOSITIONS OF LAW WITHOUT OBJECTION OR EXCEPTION, OR ASSIGNMENT OF ERROR THEREFOR, BY COUNSEL FOR DEFENDANT IN ERROR, AND AS NO ISSUE WAS PRESENTED IN PLEADINGS OR PROOFS RELATING TO ITS CHARACTER, PURPOSE OR EFFECT, THE DECISION OF THE SUPREME COURT OF ILLINOIS AND ITS JUDGMENT BASED THEREON, HOLDING AND ADJUDGING THAT SAID DEED WAS MERELY COLORABLE, NOT MADE FOR AN HONEST PURPOSE AND INVALID AND INOPERATIVE AS A CONVEYANCE OF TITLE, WERE AND ARE A TAKING OF PROPERTY WITHOUT DUE PROCESS OF LAW, IN VIOLATION AND DEFIANCE OF THE CONSTITUTION OF THE UNITED STATES AND ITS PROVISIONS CONTAINED IN THE FOURTEENTH AMENDMENT THEREOF.

Same authorities cited under point IV.

XI.

THE SAID DEED OF JUNE 10TH, 1896, TO THE CHICAGO REAL ESTATE LOAN & TRUST COMPANY CARRIED TO SAID GRANTEE ALL TITLE AND INTEREST OF PLAINTIFF IN ERROR IN OR TO SAID LOT IN QUESTION.

Frey v. *Clifford*, 44 Cal., 335.

Pettigrew v. *Dobblaur*, 63 Cal., 396.

Field v. *Huston*, 21 Me., 8 Shep., 69.

Bird v. *Bird*, 40 Me., 398.

Fitzgerald v. *Libby*, 142 Mass., 235; 7 N. E., 917.

Harmon v. *James,* 15 Miss. (7 Smedes & M.), 111; 45 Am. Dec., 296.
First National Bank v. *Hughes,* 10 Mo. Ap., 7.
Brown v. *Warren,* 16 Nev., 228.
Brown v. *Wood,* 6 Rich. Eq., 155.
Sally v. *Gunter,* 13 Rich. Law, 72.
Harvey v. *Edens,* 69 Tex., 420, 6 S. W., 306.
Smith v. *Westall,* 76 Tex., 509, 13 S. W., 540.
Brigham v. *Thompson,* 12 Tex. Civ. App., 562, 34 S. W. 358.
Barnes v. *Bartlett,* 47 Ind., 98.
Patterson v. *Snell,* 67 Me., 559.
Stewart v. *Cage,* 59 Miss., 558.
Barton's Lessee v. *Morris' Heirs,* 15 Ohio, 408.

XII.

THE HOLDING AND DECISION OF THE SUPREME COURT OF ILLINOIS IN ITS OPINION AND JUDGMENT THAT THE POINT IN RELATION TO THE CONSTITUTIONALITY OF THE STATUTE HAD BEEN WAIVED BY PLAINTIFF IN ERROR WAS ERROR ON THE PART OF SAID SUPREME COURT FOR THE REASONS AND FACTS SET FORTH AT LARGE IN THE 13TH ASSIGNMENT OF ERRORS FILED IN THIS COURT, *ante* pp. 36-37.

XIII.

IT IS SHOWN BY THE FACTS AND REFERENCES SET FORTH IN THE 7TH ASSIGNMENT OF ERROR HEREIN, *ante, pp.* 32-33, THAT THE SUPREME COURT OF ILLINOIS WAS CLEARLY MISTAKEN AS TO THE SUPPOSED FACTS RECITED IN ITS OPINION AS TENDING TO PROVE OWNERSHIP IN DEFENDANT SUBSEQUENT TO THE DATE OF THE DEED. THE ITEMS IN THE TAX WARRANT FOR 1897 ON THIS LOT WERE NOT CHARGED TO DEFENDANT AND MERGED INTO A JUDGMENT. NO JUDGMENT IS SHOWN BY THE RECORD EITHER AGAINST THE LOT OR AGAINST HIM AS OWNER. HE DID NOT APPEAR AND OBJECT TO THE TAX AS OWNER AND IT WAS ERROR AND DENIAL OF DUE PROCESS OF LAW TO REFUSE, AS THE TRIAL COURT DID, TO ALLOW HIM AND HIS WITNESSES TO PROVE THAT HE DID NOT.

ARGUMENT.

In view of the full statement of *the law* contained in foregoing points I to VI, inclusive, and the extended statement of the *facts* heretofore made, no amplification of *argument* as to those points is deemed necessary.

With reference, however, to what is said under point VII as to who is *personally* liable under section 230, the following suggestions and quotations are submitted:

In *Biggins* v. *The People, supra* (96 Ill., 383), Chief Justice Dickey said:

> "The defendant became the owner of the property in November, 1877. The taxes claimed upon the trial consisted of taxes for the year 1878, *and of back taxes for the years* 1871-77, *and the intervening years.* The taxes for 1878 amounted to only about $250, yet judgment was rendered for the sum of $5,679.25. The bill of exceptions shows that more than *$5,000 of this sum consisted of the back taxes from 1871 to 1877, inclusive.*"

The judgment was reversed "for charging the defendant with *a personal liability* for taxes for the years *prior to the time when he became owner*" (p. 384).

Referring to a misleading argument in that case, Chief Justice Dickey said (pp. 383-4):

> "It is said by counsel that the statute (Sec. 232, now 230) does not say 'against the owner of the property *at the time the taxes accrued.*'
>
> "It is true this clause of the statute is silent as to the person against whom such action is to be brought. A clear inference is, that the action is to be brought *against the person personally liable,* under the statute, to pay the tax for which the property was forfeited.

"Counsel say that the action must evidently be brought against the owner of the land when last forfeited. This position is unwarranted."

To the same effect is *Carrington* v. *The People,* 195 Ill., 485. Both cases hold the same thing, viz.: "That the declaration should *state the year* for which the supposed tax upon the property was *levied,* and should also state the defendant was the owner * * * on the first day of May, *in that year*" (96 Ill., 383), and there should be "*proof* that the defendants were the owners of the property *in the years* for which the unpaid taxes were *levied.*" (Syllabus 3, 195 Ill., 485.)

The "proof" wholly failed in the *Biggins* case except as to the tax of one year, amounting to $250, out of $5,679, just as it wholly fails in this case, except as to one year, amounting to $125, (not due) out of $2,-123; but in the *Carrington* case the proof was full and complete that there *were no forfeitures other than or prior to those incurred by the defendants themselves* in the several years *when they were the owners* of the property, *and when it was assessed* for the forfeited taxes sued for.

On page 486 (195 Ill.) the court goes carefully over the evidence and arrives at the conclusion that the defendants' ownership and taxable interest covered the entire time for which they were sought to be held for the taxes *levied within that time.*

The declaration in the present case avers that the taxes were "assessed and levied" in and for each year, 1897-8-9, 1900, but it is clear from the proof that the bulk of the judgment is made up of forfeitures for taxes levied and assessed during eighteen years prior to the first of those years (1879 to 1897) for unknown amounts and against unknown owners.

It is true that section 129 of the Revenue Law requires the county clerk in making up the amount of tax due on forfeited real property for the current year, to add to the taxes of the current year the amount of back tax, interest, penalty and printers' fees remaining due on such real property, with one year's interest at 10 per cent., etc.

It is to be observed with reference to said section 129:

First. That it was not framed for the purpose of creating or imposing any *personal liability* upon any one, but only for the purpose expressed, namely, "making up the amount of tax due on such *real property* for the current year."

Second. That it clearly recognizes "the tax of the current year" as one thing, and the back taxes and "forfeited" taxes, etc., as a different thing.

Third. That the back taxes, etc., are merely *added* to the current year's tax; that such addition is not an *assessment* for the current year made by an *assessor*, but a mere *computation* by a *clerk;* the whole proceeding being *in rem*, not *in personam*, its sole object being not to fasten liability for all or any of said taxes upon the *person*, but upon the *land*.

Greenwood v. *Town of La Salle*, 137 Ill., on page 230, points out the non-liability of the *person* and the liability of the land for interest penalties on forfeitures, even in the case of taxes assessed against the owner in and for the same year.

Mr. Justice Wilkin said:

> "The amount due the town at the time the property was forfeited was $42.76. The fact that this amount might have been carried forward, with 10 per cent. annual interest, and added to the next assessment, and so on annually, until collected by

> that means, *gives no authority for the recovery of the same rate of interest in a* PERSONAL *action. Neither can it be said* because a redemption can only be made from a forfeiture by paying 10 per cent. interest, therefore, *that rate is recoverable in an action of* DEBT."

As already shown section 230 merely supplies the remedy to enforce a *personal* liability created by section 59. It does not create, extend or enlarge that liability. (*Biggins* v. *The People*, 96 Ill., 383-4.)

In the *Carrington* case the action was brought, as already shown, against the persons liable for the tax for which the property was forfeited, and the language used by the court must be read with reference to the facts before it in that case, and to like facts in other and similar cases.

When section 230 provides for an action of debt in the name of The People for the whole amount due on forfeited property, the meaning must be understood to be that the action must be brought against the *owner* for the amount personally due *from him* under section 59, and not for the amount personally due from *others* under said section under other assessments in and for *other* years.

The clause of said section 230 relating to the recovery of personal property tax clearly brings out this meaning. Its language is that the action of debt lies "for the recovery of any personal property tax due *from such person, firm or corporation.* The meaning is, however, further clarified by the following words:

> "This act shall apply to all taxes heretofore *levied against any person, firm or corporation* and now upon any assessment book or roll."

The concluding paragraph of the section is in harmony with and fortifies the meaning we have imputed to the preceding paragraph. It reads as follows:

> "In any suit or trial for forfeited taxes the fact that real estate or personal property is *assessed to a person, firm or corporation* shall be *prima facie* evi- that *such* person, firm or corporation was the owner thereof, and liable for the taxes for the year or years *for which the assessment was made,* and such fact may be proved by the introduction in evidence of the *proper assessment book* or roll or other competent proof."

Here we see:

First. That the fact which is to be *prima facie* evidence of ownership and personal liability of the owner is an ASSESSMENT, and *nothing but an essessment,* to a person, firm or corporation *as owner.*

Second. The liability, of which such *assessment* is made *prima facie* evidence, is liability for the taxes *for the year or years* for which the *assessment* was made, not for the taxes or assessments of or in any other year or years for which *other* persons were personally liable.

On the question of ownership subsequent to 1896, the Supreme Court's opinion says:

> "The chief error urged by appellant is that the plaintiff failed to prove that George F. Harding was the owner of the property against which the taxes were assessed."

His ownership when the assessments were made in 1897-8-9 and 1900 is averred in the declaration. It was for the plaintiff to prove said averments, both as to ownership and *assessments in those years.*

The opinion proceeds:

> "The record shows that the plaintiff offered in evidence a certified copy of the collectors' warrants

of 1897, 1898, 1899 and 1900, the tax judgment sale redemption and forfeiture record for the year 1899, showing the forfeiture of the premises in question for that year and prior years, as entered in the year 1900 for the taxes of 1899."

Then, after quoting from section 230, *supra*, the opinion proceeds:

"The foregoing proof, under the provisions of this section, constituted a *prima facie* case, and established to that extent the ownership of the property in question."

With the utmost deference we submit that this is erroneous, for the following reasons: We beg leave to urge that the collectors' warrants thus admitted in evidence over defendant's objections and exceptions and set out in the record (pp. 45, 49, 53 and 57) are *not the species of evidence*, nor the best or *competent* evidence required by section 230 to make out a *prima facie* case of ownership of the lot *by appellant* in *either of the four years* referred to. Those warrants are at best recitals at second-hand of SUPPOSED assessments and forfeitures in those years, and are not made by statute evidence of the truth of their said recitals.

As to the tax judgment and sale record of 1899, and the judgment entered in 1900 for the taxes of 1899, it is not even claimed that appellant appeared in the County Court to object to said judgment. Whatever that judgment, and judgment and sale record, therefore, may amount to as partial proof of a forfeiture for the taxes of 1899, they have no apparent tendency to prove that appellant was the owner of the lot in 1897, 1898, 1900 or 1901, even if they could be claimed to prove that he was its owner in 1899.

Then as to *forfeitures*, where is there any law making

the recitals on collectors' warrants proofs or evidence of forfeitures in prior years, say 1879 to 1896, or up to 1900?

The prerequisites of a valid forfeiture of land are (1) *a judgment;* (2) *process of sale;* (3) *an offer to sell, and* (4) *a failure to sell for lack of bidders.*

Among the numerous authorities in support of this proposition, the cases of *The People* v. *Henckler,* 137 Ill., 580, and *Biggins* v. *The People,* 106 Ill., 570, are cited.

As to every one of these prerequisites, the plaintiff in error claims that there was a complete failure of proof. For example, there was not even any attempt to show either a judgment or a process of sale or an offer to sell, or a failure to sell in any year except 1900, and as to that year, *no process of sale is shown* and nearly the whole of the aggregate of $1,728.38, referred to in that exhibit under the heading of "Total Amount of Judgment," is embraced in the item of "$1,605.62" under the heading "Amount of Back Taxes and Taxes Forfeited to the State at the Annual Tax Sale for the Year *189*," and this is all the evidence in relation to this large item making up by far the greater portion of the judgment appealed from. It will be noted that it does not appear whether this is back taxes or taxes forfeited, or both, and it does not appear for what year any portion of it was assessed or forfeited except as it is headed "For Year 189."

Again this same exhibit shows both a sale on October 14, 1900, under the heading "When Sold," and shows also a forfeiture to the state, both of which cannot be true, and it does not appear whether the fact of sale or the fact of forfeiture, is true.

The point is not whether any judgment, if any, under which the land was forfeited, prior to 1900, was irregular and not in conformity to law, but *whether,* in point of fact, *the land was forfeited at all* by and through *any* judgment, process of sale, offer to sell and failure to sell

for lack of bidders in any year prior to 1900, and our contention is that this record contains *no proof* of any such prior judgment and proceedings proving any such prior forfeiture in fact. This court is now called upon to decide whether, in the absence of proof of *any* judgment, precept, order of sale and sale without bidders in any year from 1879 to 1900—twenty-one years—it will be judicially held by this court that such judgment, precept and other prerequisites, constituting a forfeiture in fact, existed, upon no better evidence, if it can be called evidence, than the words "forfeitures for A. D. 1879 and subsequent years" in all the warrants set forth in the record. Those recitals, it will be observed, are of the most vague and indefinite character, not even undertaking to specify in what year or years from 1879 down, the supposed forfeitures occurred, nor for what amounts in each or any year, nor who owned or even claimed title in each or any of said years prior to 1897.

Carrington v. *The People*, 195 Ill., *supra*, by no means holds that *tax warrants* and their recitals prove prior forfeitures for a long series of years or for a single year. What it holds is that a *prima facie* case is made by introducing in evidence a certified copy of the tax *judgment*, sale, redemption and *forfeiture record, together with proof that the defendants were the owners of the property in the years* FOR WHICH THE UNPAID TAXES WERE LEVIED. (Syllabus 3.)

The only judgment in evidence, that entered in 1900 (Rec. 65), recites and refers to *no other or former judgment in any previous year;* nor does the tax judgment, sale, redemption and forfeiture record for the year 1899 —upon which said solitary judgment was entered in 1900 —refer to or recite any prior judgment *or other prerequi-*

site of a forfeiture in fact in any year prior to 1899, and said judgment of 1900 entered, as it recites and as the opinion states, upon the tax judgment record for 1899, includes $1,605.52 under the caption "Amount of Back Taxes and Taxes Forfeited to the State on Annual Tax Sale for Year 189—," being the amount recited in the warrant of 1900 as "forfeitures for 1879 and subsequent years—" what year or years being unstated.

Our position is that *there was no prima facie* case, either of ownership or of liability, for the defendant to overcome, because $1,605.62 of the $1,728 judgment entered in 1900 was for back taxes and forfeited taxes, commingled and undiscriminated, *not shown* by the judgment or otherwise *to have been assessed to appellant in any year or years in which he was owner* of the lot, but shown *per contra*, by said judgment record, to have been forfeited *"at annual tax sale for year 189—"* and recited in tax warrant for taxes of 1899 as "forfeitures for 1879 and subsequent years."

There is not in this record any 1898 judgment, process of sale, offer to sell or failure to sell for lack of bidders —all indispensable prerequisites to a forfeiture in fact, saying nothing of a valid forfeiture.

The plaintiff cannot be permitted to aver, as in the declaration in this case that the taxes sued for and recovered by this judgment were *assessed* in each of the years 1897-8-9 and 1900, and that the "said land" was during the same years successively forfeited to the state, without being required to make proof of such averments.

While it is true that as against *the* LAND the forfeiture of any one year is a single item, including current and back taxes, together with forfeitures, costs, etc.—all of which items, *added* together *by the clerk*, not *assessed* by

the *assessor*—are merged into one item and become a new forfeiture as against *the land* by the judgment of the County Court, *when there is such a judgment,* it is *not* true that the owner becomes *personally liable* for any part of said forfeited taxes that were assessed for a year or years prior to that in which he became the owner.

Going upon the mistaken supposition that there was an 1898 judgment, the opinion continues: "His (appellant's) remedy as to that tax, if levied unjustly against him, was by appeal."

That tax, we submit, would have been levied against *the land,* not against *him,* nor would the judgment, had there been one, have been against *him,* but against *the land.* By explicit terms of section 58 the assessment would not have been illegal, if not in *any* owner's name. It is not the object of a tax judgment to adjudicate *who is the owner* of the land, but to subject the *land* to the tax. We may be in error, but we submit that such a judgment is not an adjudication binding upon the world, or upon anybody, that the claimant and objector is the owner of the land.

> "It is *not* true that the appellant objected to the collector's application for judgment *in his own name* AS OWNER, BUT HE WAS SHOWN ONLY (if that document be treated as in evidence) TO HAVE JOINED WITH THE REAL OWNER OF THIS LOT, THE CHICAGO REAL ESTATE LOAN & TRUST COMPANY, in objections embracing this and many other tracts. And even the document itself only recites that the parties were the owners of OR interested in the tracts."

The undisputed testimony of George F. Harding, Jr., in this record established the existence of a General Real Estate and Renting Agency, conducted in appellant's name, having charge and care of this lot for its owner, the Chicago Real Estate Loan & Trust Com-

pany. The full scope of this agency was offered to be shown by appellant and other witnesses, but was we submit, *erroneously* ruled out by the trial judge. Nevertheless said general agency stands proved by the testimony of George F. Harding, Jr. It establishes the fact that appellant, through said general agency, was *"interested"* in said lot, but only as agent.

It might well be, therefore, literally true, as set forth in the objections, that the objectors, the Chicago Real Estate Loan & Trust Company and appellant, were jointly *"interested,"* as the former was *owner* and the latter was the owner's *agent.*

It would be dangerous and startling, indeed, if all real estate agents in Chicago, objecting, as *"interested"* in property, to tax judgments against the same, should be held to make themselves *personally liable,* as owners, for taxes, penalties and forfeitures.

Such objections filed by attorneys for real estate agencies should not, we think, be so overstrained beyond the actual truth and facts of the situation.

The objections did not undertake to state what the interests of the objectors were and certainly the recital is just as much an evidence of ownership by the Chicago Real Estate Loan & Trust Company, one of the parties joining in the objections, as it could possibly be an evidence of ownership by George F. Harding. In truth, when taken in connection with the general deed from appellant to said company, these objections corroborated and confirmed that deed.

In the fifth proposition of law, the trial court held that these objections were not sufficient to show a revesting of any title or interest in the lot in George F. Harding subsequent to his deed to the Chicago Real Estate Loan

& Trust Company; while at the same time holding, in the sixth proposition, that the burden was on the plaintiff to prove such revesting of title.

Appellee did not except to said holdings, nor to any of the holdings of the court on any proposition of law.

But if this court shall be of opinion, after due consideration of the foregoing suggestions, that a *prima facie* case was made out, the next question is whether it was or was not defeated by the deed and other evidence introduced by the defendant below, or would have been defeated had not other proper evidence offered by the defendant been erroneously excluded, in violation of the provisions of the fourteenth amendment.

The remainder of this Argument applies to points VIII, IX, X and XI, as Points XII and XIII need not, we think, be further agued.

THE DEED. HOW CAN IT BE HELD UPON THE ISSUES AND EVIDENCE IN THIS ACTION, NOT TO HAVE BEEN A GOOD CONVEYANCE OF THE LOT AND OF ALL OF GEORGE F. HARDING'S INTEREST AND TITLE, LEGAL AND EQUITABLE, THEREIN TO THE CHICAGO REAL ESTATE LOAN & TRUST COMPANY?

The trial court, after due deliberation, not only held that it was a deed admissible in evidence, and admited it, but said of it, that, being admitted "we would have to say the title was in the grantee until the contrary appeared;" and, in the third proposition of law the court specifically held that the said deed "was a valid and sufficient conveyance of all the interest of the grantor at the time of the making of the deed in or to the property described in the declaration;" and held in the fourth proposition that the fact of subsequent assess-

ments in the name of the grantor was not sufficient to show a revesting of any title or interest in the grantor.

The following colloquy occurred between the court and appellant's counsel, referring to the latter's offer to prove that no title or interest had been reacquired by appellant:

Counsel: "Then the testimony is rejected or refused upon your Honor's ruling that the deed would show the title *as far as the proof is* NOW *completed*, in the Chicago Real Estate Loan & Trust Company;" and to this the court replied: "YES." *The proof as completed* AT THAT TIME included the *assessment rolls, tax warrants,* and the judgment record, etc., so that the court thus announced that the deed itself was sufficient to destroy the *prima facie* case of the plaintiffs, and this was exactly the view of counsel for appellee, who stated: "Now, if you establish that deed, isn't it true * * * it would be valid *until* we rebut it?—thus conceding that the deed would have to be overcome *by new and additional proof* NOT ALREADY BEFORE THE COURT.

Both the court and the counsel for appellees *adhered to this view as to the validity and effect of the deed throughout the trial.*

Plaintiff's counsel never once objected to the introduction of the deed on the ground that it was fraudulent, colorable, fictitious or dishonest, or anything but what it purported to be, namely, an absolute conveyance of all interest in the lot.

There were no pleadings or issues in the case upon which any such objections as the foregoing *could be* raised. Appellant and his counsel had no warning at the trial that any such objections ever would be raised; and therefore had no opportunity to meet and overcome such

objections; and certainly could not anticipate that any court, least of all the Supreme Court, would start or listen to such objections, let alone pass upon them, not merely to the detriment of appellant's financial interests involved in the case, but the disparagement of his honesty and integrity as a man.

In the court below, appellant offered to prove by clear, competent, positive, conclusive evidence that no right, title or interest in or to the lot in question remained in him or had become vested in him, by conveyance or otherwise, subsequent to the making of the deed of June, 1896, and that he *had not been in possession* of the lot since then; but the court below, *erroneously and unconstitutionally,* as we claim, ruled out all such proof, and offers of evidence.

On what theory such ruling could possibly be sustained by the Supreme Court we are unable even to conjecture. It is inconceivable to us why appellant should not have been allowed, by himself and witnesses to prove, as he offered to do, that he never, subsequent to the deed, had or acquired, or became revested in any manner with any title or interest in or possession of the lot. For this error alone, in common fairness, there should have been, we respectfully submit, a reversal of the judgment by the State Supreme Court; and due process of law demands there should now be a reversal of it by this court.

Without any information and without any opportunity given appellant or his witnesses to furnish any information as to the actual transactions between appellant and the Chicago Real Estate Loan & Trust Company, attending the making of said deed, the conclusion that the deed was fraudulent, dishonest and colorable seems to be a very harsh one to reach from the mere fact that five

dollars was the consideration recited in the deed, and that the General Real Estate and Collection Agency conducted in the name but in the absence of appellant, continued to look after the grantee's rents and taxes. Especially is this true when appellant was denied the right to prove and explain the facts connected with the management of said agency, and in the light of the admitted testimony of George F. Harding, Jr., that *among the rents* COLLECTED for different owners by the agency were those for the Chicago Real Estate Loan & Trust Company, and that the VERY CHECKS IN EVIDENCE were collections, BY THE AGENCY, FOR THAT COMPANY, the receipts attached thereto being for the same moneys represented by the checks, and that settlements for said rents were regularly made with Mr. Callow, of Monmouth, Ill., as agent for said company.

The deed of June, 1896, caried over to the grantee, of course, under our statutes, all those existing leasehold interests, rents thereunder, and future rents.

Is it not clear and plain, that for taxes and forfeited taxes assessed in 1897, '8, '9 and 1900, an action of debt would and will lie under section 230 against the Chicago Real Estate Loan & Trust Company, and that said deed is the very strongest evidence of ITS *individual liability?*

It seems to have been overlooked, that even if the deed was fraudulent, appellant cannot be held as owner, because it was not void as between grantor and grantee, nor even as against creditors; but only voidable, and valid until vacated by a creditors' bill or some other proper proceeding, in which fraud was clearly and specifically charged.

Hicks v. *Stevens,* 121 Ill., 192-3, and ref's.

There is no proof in the record as to appellant's financial condition at the time of said conveyance; nor anything militating against his right at that time to convey his property for any consideration he pleased, or without any consideration whatever, and to whom he pleased.

He certainly was not seeking by said conveyance to avoid liabilities—*not yet incurred*—running through the four following years, and *if* he was *personally* liable as owner for assessments in 1896 and prior years, of which there is no proof, he could not escape them by making such conveyance, and should have been sued for such prior assessments instead of such later assessments.

He had the right to suppose that assessors would do their duty, would go by the records of the county and assess the property to his grantee shown by the county records. He was not supposed to come back here from his home in Los Angeles, Cal.,—shown to be his home by the recitals of the deed itself—to perform the assessors' statutory duty for four years or longer; and no inference of fraud arises from his not doing so.

He knew that all taxes and forfeitures were a first lien on the land; and that it could be enforced by foreclosure (106 Ill., 274), as well as by sale for taxes and forfeitures. This record shows that the land at the usual low valuation was worth more than $7,500 (Rec., 19).

He knew that he could be sued personally for all assessments prior to 1897 for the years, if any, in which he was the owner; and that his grantee could be similarly sued for the taxes and forfeited taxes assessed against it in subsequent years. Where then are there any just grounds for convicting him of fraud in the execution of said deed?

We appeal to the court on this and on every other ground to reverse the judgments of the courts below.

If this judgment can stand upon the opinion of the State Supreme Court treating the deed of June, 1896, as a nullity, we cannot see how appellant is ever hereafter to be relieved of *personal liability* for all taxes *hereafter* to be assessed against said lot.

Until the legislature in 1881 gave courts of chancery jurisdiction to enforce tax liens upon real estate by foreclosure, no such right existed. (*The People* v. *Biggins*, 96 Ill., 481.)

It was held in that case that the courts were not called upon to provide a remedy by extending the equitable jurisdiction beyond its recognized limits. No preference was shown to the state over any other suitor. The officers of the state, in the collection of revenue, were held as much bound to observe the statute and to proceed in accordance with it as was any private individual. (*Id.*)

We invoke the application of that principle in this case.

Respectfully submitted,

WILLIAM H. BARNUM,
Attorney and of Counsel for
Plaintiff in Error.